is applied to a house as a whole it must mean that each and every room is unfit....."

There was in my opinion no evidence before the Magistrate in the present case either that the houses in question were unfit for human habitation or that they were so unfit by reason of a nuisance.

There is a further point regarding this Closing Order, which was not taken at the hearing before me. The original Notice called upon the owner to abate the nuisance within one month from the service of the Notice. The owner failed to comply so that one month after service, which was effected on the 7th July, 1950, he was in default. Upon this default the owner was summoned in pursuance of section 247(1) and appeared before the Court. It was then open to the Court both to impose a fine and then make an Order, which under sub-section (2) of section 247 could be an Abatement Order or a Prohibition Order or a Closing Order or a combination of such Orders. After hearing the parties the Magistrate made an Abatement Order only. I am inclined to think that that was the end of the proceedings and I doubt whether the Magistrate had any jurisdiction to make any further Order at a subsequent time upon a fresh Summons regarding the same default. Under sub-section (9) of section 247 the owner could, of course, be summoned, as he was, and fined; but having refrained from making a Closing Order when the matter was properly before the Court on the 18th October, 1950 I find it difficult to see under what provision of the law a further Nuisance Order in the shape of a Closing Order could be made on the 7th March, 1951. As, however, the point was not argued before me I express this view only tentatively.

As the original Notice upon which all the proceedings in this case are founded is invalid I think they are all bad *ab initio*. I have, however, expressed my opinion upon the various other points raised not only in deference to the arguments put forward before me but also because my views may be of assistance both to the Municipality and to Magistrates before whom such cases may in the future be brought.

My order, therefore, will be that the Abatement of Nuisance Order made on the 18th October, 1950 and the Closing Order made on the 7th March, 1951 are set aside. It follows that the Summonses against the various occupants are without foundation and Summons Cases Nos. 803 804, 805, 806 and 807 of 1951 are dismissed. The Orders on the landlord to pay costs cannot stand either and any costs paid by him must be refunded.

It was suggested by Mr. Pooley on behalf of the Municipality that any further proceedings in respect of these premises should be heard in the High Court. I have come to the conclusion that this course is not possible. The existing proceedings were removed into the High Court under the provisions of section 57 of the Courts Ordinance, and those proceedings have now been disposed of. There are, therefore, now no proceedings in existence which can be dealt with under that section. I am, therefore, of the opinion that the proper course will be for the Municipality, after going further into the whole matter, to consider whether they should proceed under either the back-lane or the improvement provisions of the Ordinance, or alternatively, under section 236 or section 246. If as a result of any action they may take under any of those sections further proceedings are taken, then if any person affected by those new proceedings is aggrieved the matter can again be brought before me either on appeal or upon review as the case may be.

Order accordingly.

OVERSEA-CHINESE BANKING CORPORATION v. KHOR THYE SENG.

[Orig. Civ. Juris. (Thomson, J.) May 16, 1952]

[Ipoh — Originating Summons No. 250 of 1952]

Debtor and Creditor (Occupation Period) Ordinance, 1948, s. 4(3)(b) — Demand — Meaning of — Whether the rendering of a Statement of Account by a bank constitutes a demand.

In December 1937, one Khor Tai Kwee, now deceased, opened an account with the Ipoh branch of the Oversea-Chinese Banking Corporation, Ltd. The account was an ordinary current account and it was arranged that Khor Tai Kwee should be allowed to overdraw, the overdraft being secured by two charges on a piece of land at Kuala Kangsar. At the Japanese occupation of Malaya, there was an amount of $13,319 due to the bank on the overdraft. Down to the end of April 1944, a number of payments were made into the account by Khor Tai Kwee, leaving a debit balance of $11,594. Thereafter four payments were made by Khor Tai Kwee and when he died in 1945, the account was in credit to the extent of $838. The charges which had been given by way of security were not discharged. The present proceedings were brought by the bank against the administrator of the estate of Khor Tai Kwee. The bank claimed that the payments made in 1944 were made voluntarily without demand in respect of a pre-occupation debt and should accordingly be revalued in accordance with the provisions of the Debtor and Creditor (Occupation Period) Ordinance. It was argued for the respondent firstly that the bank had failed to discharge the onus of proving that no demand was made, that in the absence of any reliable evidence payment by itself imparts a demand and that the action being against the estate of a deceased person, the Court must be convinced that no demand was made by the bank; secondly it was argued that the monthly statements of accounts rendered by the bank constituted a demand in law.

Held, (1) on the facts that no factual demand was made by the bank; (2) that the mere rendering of a statement of account by the bank was not a demand in law, as the account was not an account for goods supplied or services rendered but merely an account of entries in the account of the customer.

Cases referred to :—

(1) *Abdul Hameed Mohd. Ibrahim & Co. v. A. M. S. Nainam Sahib & Co.* (1951) M.L.J. 103.
(2) *Brown v. Rutherford* 14 Ch. D. 687.
(3) *Blair v. Cordner* (1887) 19 Q.B.D. 516.
(4) *In re Mc'Murdo* (1897) 1 Ch. 119.
(5) *Ex parte Campbell* L.R. 5 Ch. 703.
(6) *Trimble v. Hill* 5 A.C. 342.
(7) *Nadarajan Chettiar v. Malauwa Mahatmee* (1950) A.C. 481.
(8) *Barras v. Aberdeen Steam Trawling & Fishing Co.* (1933) A.C. 402 at p. 411.
(9) *Khoo Soo Jin v. Lye Yew Song* (1951) M.L.J. 231.

ORIGINATING SUMMONS.

H. T. Ong for the applicant.

S. K. Das for the respondent.

Cur. Adv. Vult.

Thomson, J. : — This case concerns the application of the Debtor and Creditor Ordinance, 1948, to certain circumstances which have hitherto escaped the the attention of the Courts.

The facts are simple and, except in so far as they are matters of inference, are not in dispute.

In December, 1937, one Khor Tai Kwee now deceased (to whom I shall refer as the Customer) opened an account with the Ipoh branch of the Oversea-Chinese Banking Corporation Ltd. (to which I shall refer as the Bank). The account was an ordinary current one and it was arranged that the Customer should be allowed to overdraw up to $10,000 which was later increased to $15,000. This overdraft was secured by two charges over a piece of land at Kuala Kangsar and interest was to be paid on it at the rate of 8.4% per annum with monthly rests.

On 31st December, 1941, the Customer owed the Bank $13,319 and this apparently remained the debit balance for the remainder of the period prior to 15th February, 1942.

When the Japanese occupied the country they allowed certain Banks, of which the Oversea-Chinese Banking Corporation was one, to continue operations. These operations, however, were subject to the control of the Japanese authorities, and apparently to assist in the withdrawal of pre-war currency and its substitution by Japanese occupation currency and also, no doubt, with a view to attempting to avoid the process which is commonly known as inflation, the Japanese "blocked" all current accounts with the Banks which they had allowed to continue in operation, that is to say, generally speaking the Banks were prohibited from granting new overdrafts or increases in existing overdrafts and were required to apply moneys paid into overdrawn accounts to the reduction of the overdraft. Also in view of the commercial confusion which had attended the early months of the occupation they prohibited interest in respect of the period up to August, 1942.

The effect of these arrangements on the account with which I am here concerned was that the Customer was not able to draw upon it so long as it was overdrawn while, of course, the Bank continued to be entitled to its interest except in respect of the period up to August, 1942.

Down to the end of April, 1944, a number of payments were made into the account by the Customer and interest was regularly debited to his account on the outstanding amount of the overdraft at the end of each month. The debit balance then was approximately $11,594. Thereafter four payments were made by the Customer, three of them by cheque drawn on the Yokohama Specie Bank and all of them to be deemed to be in occupation currency. These payments amounted to $10,000, $124, $425 and $2,000 and were made on 24th May, 1944, 25th May, 1944, 13th July, 1944, and 7th December, 1944. When the last of these payments had been made the account was in credit to the extent of $838. The charges which had been given by way of security were not discharged and indeed are still registered against the land.

The Customer died on 28th January, 1945, without any further transactions occurring to affect the account and the present proceedings have been brought by the Bank against the Administrator of his estate. In them the Bank claims that the payments made by the Customer in 1944 were made voluntarily and without demand in respect of a pre-occupation debt and should accordingly be revalued in accordance with the provisions of the Debtor and Creditor Ordinance, and it is agreed between the parties that if these payments are to be thus revalued there is owing from the Customer's estate to the Bank a sum of $9,150 with interest at the rate of 8.4% from 1st October, 1949.

The defence is in the first place that the Bank as applicant has not discharged the onus which lies upon them of proving that the payments made by the Customer were made voluntarily and without demand (see *Abdul Hameed Mohd. Ibrahim & Co. v. A. M. S. Nainam Sahib & Co.*[1]) and in the second place, that there was in fact demand and that each of the payments was made within three months of the receipt by the Customer of a statement of account sent to him by the Bank which amounted in each case to a demand for payment of the debit balance shown in it.

It will be convenient at this stage to consider the evidence which is before me. Apart from the respondent, whose affidavit is largely formal, the only witness was a Mr. Tan Ee Leong who had been employed at the Ipoh branch of the Bank from the time it was opened in 1933 until 1952 and who from 1933 until 1949 was Accountant at the Ipoh branch. His evidence, which was at no time seriously attacked, was to the effect that as far as he was aware no demand was ever made on the Customer for settlement of the overdraft and that, again so far as he was aware, no approach (to use a colourless word) was ever made to him in connection with his account save and except the sending out to him of monthly statements of account in accordance with the usual practice of the Bank in relation to all its customers. He went on to say that he did not believe that any demand could in fact have been made without his being aware of it. This particular Customer generally came to see him personally when he called on business at the Bank, and during the occupation the Manager was a Mr. S'ng Chean Hee, now deceased, who was not familiar with the Bank's local customers and who used to consult him regularly before corresponding with them. He admitted that the Manager occupied a room of his own and that there were about twenty clerks employed at the Bank but he still thought it unlikely that any demand could have been made on this Customer without his being consulted.

I am well aware that I am here concerned with what is in effect a claim against the estate of a deceased person who alone would have been able to contradict the evidence to which I had listened. Nevertheless, I am satisfied on the evidence that no approach was in fact made to the Customer except by way of sending him monthly statements of account. I am satisfied that had any approach been made to the Customer by way of demand, Mr. Tan Ee Leong would have known about it, and I am satisfied that in saying he had no knowledge of any such approach he was speaking the truth. This finding was supported not only by the view I took of Mr. Tan Ee Leong as a witness of truth but also finds support in all the surrounding circumstances. So far as the Bank was concerned there was no reason why they should demand payment. From their point of view the whole transaction from the beginning had been a profitable one, their debt was fully secured, up till April 1944 interest had been paid to them not very regularly, it is true, yet more than in full as is shown by the fact that from the end of 1941 until April 1944 although interest was regularly debited at monthly intervals the total debit balance had been reduced by about $1,700. As far as the Customer was concerned, it was clearly his intention that his account with the Bank should continue as a current account after the last payment made by him on 7th December, 1944, for that last payment was not merely sufficient to pay off the debit balance but left the account in credit to the extent of $838, and nothing was done to discharge the existing charges against the Customer's land to secure an overdraft. Such an intention, to my mind, is inconsistent rather than consistent with any sort of pressure having been put on him to pay off the overdraft particularly when it is borne in mind that he had an account with the Yokohama Specie Bank.

At this stage I would pause to say a few words regarding the case of *Brown v. Rutherford*[2] which has been cited in this case (and in previous cases under the Debtor and Creditor Ordinance) as authority for the proposition that payment of interest on a debt is some evidence of a demand having been made by the creditor for its payment. In my opinion, to deduce any such principle as of general application from the case in question is taking it much too far. What was at issue in that case was whether there had been a demand for payment on a promissory note. No interest was reserved in the note but it was endorsed upon it that interest had in fact been paid on two dates subsequent to its being made. There was no other evidence on the question of demand and Jessel, M.R., in his judgment referred to the endorsements as to interest and observed (at page 691) :—

> "These indorsements import that a demand had been made, for the payment of interest implies that a debt is due, interest being paid for bearance of a debt."

I am unable to read into these words any more than His Lordship inferred from the fact that interest had been paid in respect of a debt which was payable on demand but in respect of which interest had not been reserved, that there had in fact been some demand for payment and that the interest had been paid as the

price of forbearance. The facts of the case are wholly different from those in the present case, or indeed in the ordinary moneylender's case, where interest has been reserved at the time the debt has been incurred and indeed is an express term of the contract of lending.

I now proceed to consider the question of the monthly statements of account. These statements, according to Mr. Tan Ee Leong, were sent out at the end of each month by the Bank to all its customers in respect of their current accounts. They commence with the following words :—

"Dear Sir/s,

The following is a statement of the entries which have been made in your account since the last statement sent to you. We would ask you kindly to check it up carefully and to report to us at once should there be any irregularity.

Please preserve this statement for your own record.

Yours faithfully,
for Oversea-Chinese Banking Corporation, Ltd."

They then set out the balance brought forward from the previous statement, particulars of all transactions affecting the account during the month and the balance carried forward at the end of the month. It was accepted at the trial as a matter of common knowledge that it is the general practice of Banks to supply such monthly statements to their customers, such a practice having replaced the earlier practice of providing the customer with a passbook in which particulars of his account corresponding to the particulars in the books of the bank were entered from time to time. It is perhaps of more than academic interest to observe that such a practice of duplicate has roots going back for many centuries to the days when accounts were kept by cutting notches on parallel tallies and conveyances were recorded in duplicate on sheets of parchment which were cut in two so as to leave an indentured edge. Although only three of the monthly statements sent by the Bank to the Customer in the present case were put in evidence, namely those dated 1st May, 1944, 1st July, 1944, and 5th December, 1944, the ones at the beginning in each case of the months in the course of which the disputed payments were made, it was conceded at the trial that such statements were in fact rendered to the Customer at the beginning of every month.

In all the circumstances of the case, I am not prepared to say that any one of these statements in itself amounted to a demand on the part of the Bank for payment of the debit balance shown in it nor that the practice of sending them amounted in any way by itself to a demand for payment. To my mind each one of these statements is nothing more than an incident in the traditional practice of regular duplicate accounting maintained by this Bank, in common with all its customers irrespective of whether their accounts were in debit or in credit at the end of any particular month and I am satisfied that in the absence of any specific demand in terms it was no more intended to be or even remotely likely to be regarded as a demand for payment to the Bank when the account was in debit than it was intended as an intimation that the Bank wished to pay to the customer the balance of account when the account was in credit.

I think I have said enough to conclude the matter in favour of the applicant. I feel, however, in view of the care with which the case has been argued that it would be only right to refer specifically to two arguments put forward by Counsel for the respondent.

In the first place, I refer to the provision in section 4(3) (b) of the Debtor and Creditor Ordinance that "the word 'demand' includes the rendering of an account for goods supplied or services rendered". It is important to observe that the word used here is "for" and not "of". There is all the difference in the world between rendering an account "for" services rendered and rendering an account "of" services rendered, and what I am here concerned with is a statement "of" entries made by the Bank in the customer's account which purports in terms to be furnished to him for the purpose of checking any irregularity which may have occurred and for preservation for his own record. To render an account "for" goods supplied or services rendered clearly implies in itself an intimation on the part of the person supplying the goods or rendering the services of an expectation to receive payment, and in my view the intention of the Legislature in the provision I have quoted was to make it clear that any rendering of an account that in itself connoted such an intimation should be treated as a demand for payment for the purposes of the Ordinance. To my mind, however, it is clear that the regular supplying by a Bank to its customers of statements "of" account of the sort I have been considering cannot in itself be regarded as connoting an intimation that payment is expected and so cannot properly be described as rendering accounts "for" services rendered.

In the second place, I have to refer to the cases of *Blair v. Cordner*[3] and *In re Mc'Murdo*[4]. In *Blair v. Cordner* it was held that the delivery of a solicitor's bill amounted to a demand for payment of it so as to make interest payable after one month from the date of demand by reason of General Order VII made

under the Solicitors' Remuneration Act, 1881, and Lord Esher, M.R., said (at p. 518) :—

"It is suggested that to send in a bill is not to demand payment of it, but this is a fanciful view. The words "from demand" mean "from sending in the bill"."

In *Mc'Murdo's* case, North, J., observed (at p. 121) in dealing with the same statutory provision :—

"It is quite settled that a delivery of a bill of costs amounts to a demand for payments."

It was argued that here the expression "demand" occurring in a statute had received judicial interpretation and that it is an accepted principle of interpretation that where an expression occurring in a statute has received judicial interpretation the same expression when used in a later statute should be given the same interpretation.

That principle rests on the cases of *Ex parte Campbell*[5], *Trimble v. Hill*[6] and *Nadarajan Chettiar v. Walauwa Mahatmee*[7] among others. It is however, clearly subject to the limitation that the two statutes must be in *pari materia*. In *Ex parte Campbell*, the Court was concerned with a section in the Bankruptcy Act, 1861, which was identical with a section in a repealed Bankruptcy Act, in *Trimble v. Hill*, the Privy Council were concerned with a colonial statute relating to gaming which was in the same terms as an earlier English statute on the same subject, and in the last case which I have mentioned the same tribunal was concerned with the interpretation of a section of the Ceylon Money Lending Ordinance which was in language identical with a section of the English Moneylenders Act. The principle was thus stated by Viscount Buckmaster in *Barras v. Aberdeen Steam Trawling & Fishing Co.*[8] (at p. 411) in a passage which clearly indicates the limitation I have mentioned :—

"It has long been a well established principle to be applied in the consideration of Acts of Parliament that where a word of doubtful meaning has received a clear judicial interpretation, the subsequent statute which incorporates the same word or the same phrase in a similar context, must be construed so that the word or phrase is interpreted according to the meaning that has previously been assigned to it."

The two statutes, however, with which I am concerned in the present case are not in *pari materia* and in them the word "demand" is not used in a similar context. The Solicitors' Remuneration Act is a part of the elaborate mechanism whereby the remuneration of solicitors is controlled and whereby in return for such control the solicitor is given certain rights against his client. He is given, *inter alia* the right to interest on his bill but he cannot claim such interest until the amount of his bill has been formulated, until the amount thus formulated has been intimated to his client and until his client has had the specified period of one month to pay. The Debtor and Creditor Ordinance, on the other hand, consists of a highly artificial series of rules for adjusting in the light of subsequent events the effects of financial transactions during the Japanese occupation in terms of a currency that has since become valueless. There is no question of when the amount of any particular debt was ascertained. What is in question is the time of payment and, above all, the motive for payment, whether it was motivated by a demand on the part of the debtor or a desire to effect payment on the part of the creditor. And, in any event, before departing from the case of *Blair v. Cordner* I would, with respect, observe that I do not think it can be seriously argued that Lord Esher had any intention of formulating a definition of "demand" of universal application. It is only a matter of common sense to say that when a solicitor sends in his bill it is fanciful to say that he is not asking for payment of it.

In the whole dreary and perjured course of litigation under the Debtor and Creditor Ordinance, one thing has been implicitly accepted but has not, so far as I am aware, been said in terms and I propose to say it in terms now. The truth is that for the purposes of section 4 of the Ordinance the questions of whether or not there has been demand and of what is demand are questions of fact to be decided on the evidence in each individual case. As was said by Taylor, J., in the case of *Khoo Soo Jin v. Lye Yew Song*[9] :—

"The demand may be oral or written, formal or informal, express or implied, but it must be communicated to the debtor. Where the demand was not explicit the question must be: What was the effect on the mind of the debtor? If in the circumstances he reasonably thought that he was called upon to pay a legal debt, the step taken would amount to an implied demand."

and again as was said by Spenser Wilkinson, J., in the same case :—

"I think any action or conduct which clearly and unequivocally acts upon the mind of the debtor as a demand would be covered by the wording of the section."

I would summarise my view on the questions of fact in the present case by using the homely illustration which I used in the course of the trial. If at the beginning of May, 1944 (or the beginning of July or the beginning of December) the Customer had found upon his breakfast table his monthly bill from his grocer, a bill of costs from his solicitors and one of the statements of account from the Bank which are in evidence, it seems to me that the state of his mind would have been as regards the grocer and the solicitor that they were in effect asking for payment but in view

of the whole course of dealing between him and the Bank, I do not think that it would for one moment have crossed his mind that the Bank were asking for settlement of his debit balance.

All that is asked for in the present case is a declaration as to the amount due and payable by the respondent as administrator of the Customer's estate to the Bank and there will accordingly be a declaration that there is due and payable an amount of $9,150 with interest at the rate of 8.4% per annum from 1st October, 1949. The applicant will have his taxed costs in these proceedings.

Application allowed.

CHE YUSOF BIN ISMAIL v. TAY KAY CHUA.

[App. Civ. Juris. (Thomson, J.) May 21, 1952]

[Ipoh — Civil Appeal No. 19 of 1951]

Landlord and tenant — Rent Restriction — Rent — Total of rent and rates paid by tenant — Agreement to pay rates to landlord — Control of Rent Ordinance, 1948, s. 13(1)(j).

In this case the appellant was the tenant and the respondent was the landlord of premises known as No. 38 Ah Cheong Street, Teluk Anson. The terms of tenancy, which it was admitted had been lawfully terminated by notice to quit, were that the tenant should pay to the landlord rent at the rate of $81.25 per month together with the amount of the Town Board assessment payable by the landlord which was payable half yearly but was at the rate of $13.08 a month. Some time prior to the commencement of the suit the tenant had sublet portions of the premises to three sub-tenants at rents amounting in the total to $125/- a month but retained a portion of the premises for his own occupation. At all material times these three sub-tenants and the tenant were in occupation of different parts of the premises. The landlord asked for possession of the premises as against the tenant and ancillary relief, and the only question that arose was whether the case fell within section 13(1)(j) of the Control of Rent Ordinance, 1948.

Held, that as the tenant was receiving from the sub-tenants about 92% of the amount paid by him to the landlord including the amount of the Town Board assessment the case fell within section 13(1)(j) of the Control of Rent Ordinance.

CIVIL APPEAL from the Sessions Court, Teluk Anson.

S. M. Sharma for the appellant.

D. G. Ironside for the respondent.

Cur. Adv. Vult.

Thomson, J. : — This is an appeal from the Sessions Court, Teluk Anson. I reserved judgment because at the time of the hearing of the appeal I thought it might be necessary to express views on certain matters which might be of assistance to lower courts, and I therefore felt I should choose my words with some care. On reflection, however, I have come to the conclusion that to follow such a course would be to go further than is necessary to dispose of the appeal.

The appellant was the tenant and the respondent is the landlord of premises known as No. 38 Ah Cheong Street, Teluk Anson. The terms of the tenancy, which it is admitted has been lawfully terminated by notice to quit, were that the tenant should pay to the landlord rent at the rate of $81.25 per month together with the amount of the Town Board assessment payable by the Lordlord which was payable half yearly but was at the rate of $13.08 a month. Some time prior to the commencement of the present proceedings the tenant had sub-let portions of the premises to three sub-tenants at rents amounting in the total to $125 a month but retained a portion of the premises for his own occupation. At all material times these three sub-tenants and the tenant were in occupation of different parts of the premises.

The landlord asked for possession of the premises as against the tenant and ancillary relief, and the only question that arose was whether the case fell within section 13(1)(j) of the Control of Rent Ordinance, 1948, which reads as follows :—

"13. (1) No order or judgment for the recovery of possession of any premises comprised in a tenancy shall be made or given except in the following cases, namely —

.....

(j) where the tenant having sub-let the premises or part thereof, receives, in respect of such sub-letting, rents (exclusive of any payment by the tenant for Municipal or Town Board services) which exceed in the aggregate seventy-five per cent. of the rent paid by the tenant."

In the event, the President of the Sessions Court decided the question in favour of the landlord and gave judgment in his favour as prayed subject to the usual saving in favour of the sub-tenants.

Against that decision the tenant has now appealed.

I do not propose to deal at length with the grounds of appeal because, quite frankly, I fail to see the relevance of many of them to the case before me.

The rent payable by the tenant to the landlord was $81.25 per month or, if the amount payable in respect of the Town Board assessment be added, $94.33 per month. For the sake of argument I shall assume the latter figure which is the figure of the two more favourable to the appellant.

The amount paid by the sub-tenants to the tenant was $125 per month. From that sum of $125 per month fall to be deducted for the purposes of section 13(1)(j) "any payment by the tenant for Municipal